

# Exhibit 1

March 1, 2023 Motion to Compel  
Hearing Transcript

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IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

BENJAMIN GEORGE, ) Docket No. 20 CV 6911  
Plaintiff, )  
-vs- )  
CITY OF CHICAGO, et al., ) Chicago, Illinois  
Defendants. ) March 1, 2023  
11:00 o'clock a.m.

TRANSCRIPT OF PROCEEDINGS - Motion  
BEFORE THE HONORABLE JOHN ROBERT BLAKEY

APPEARANCES:

For the Plaintiff: FIRST DEFENSE LEGAL AID  
BY: MR. DANIEL MASSOGLIA  
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Smith, Ferrara and  
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APPEARANCES: (Cont'd)

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Corona: BY: MR. JORDAN F. YURCHICH  
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(The following proceedings were had in open court:)

COURTROOM DEPUTY: 20 CV 6911, George versus City  
of Chicago, et al.

THE COURT: Good morning, counsel. Appearance on  
behalf of the plaintiff?

MR. MASSOGLIA: Daniel Massoglia, your Honor. Good  
morning.

THE COURT: On behalf of defendants?  
MS. FRONCZAK: Good after -- or good morning, your  
Honor. Caroline Fronczak on behalf of the City of Chicago.

MR. BECK: Gregory Beck on behalf of defendants  
Ferrara, Smith, Thomas, and Palka.

MR. YURCHICH: Good morning, your Honor. Jordan  
Yurchich on behalf of Officers Ing and Corona.

MR. CARROLL: Good morning, your Honor. Thomas  
Carroll on behalf of Charles Sikanich and James Gardiner.

THE COURT: All right. We're here on plaintiff's  
motion to compel. Are the parties prepared to argue?

MR. MASSOGLIA: Yes, your Honor.

MR. CARROLL: Yes.

THE COURT: All right. These motions are usually a  
moving target. Things are changing over the course of it.  
Can you give me an update from -- at least from my review of  
the pleadings, there's several things that are moot  
including, I believe, interrogatories 4 and 23, and request

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for productions 2, 3, and 7. Anything else been mooted by  
the parties?

MR. MASSOGLIA: Well, they -- your Honor,  
respectfully, they -- they would have been mooted had  
defendants' counsel or defendants tendered any of those  
answers or information. However, as of today, we've received  
nothing additional since the supplement.

THE COURT: Well, they agreed to supplement them.  
Counsel, do you have a deadline for when you can get those  
issues mooted?

MR. CARROLL: I would imagine within 14 days. I'm  
going to be out of town next week or it would be shorter than  
that.

THE COURT: All right. Can you do it by the 13th?

MR. CARROLL: If I could have until the 17th, is  
that possible?

THE COURT: Saint Paddy's Day, you got it.

MR. CARROLL: Yes.

THE COURT: All right. So 3-17. So that moots it,  
counsel, because they've said they're going to do it and I  
just ordered it by a deadline so those are moot.

Anything else that's been mooted or is everything  
else a live bullet?

MR. MASSOGLIA: Everything else is live, your

Honor.

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1 THE COURT: Okay. All right. I'll -- why don't  
2 you go ahead and take them in turn and I'll hear from  
3 everybody? Go ahead, counsel.  
4 MR. MASSOGLIA: Sure. So as a threshold issue, you  
11:05AM 5 know, the plaintiff just wants to first express sympathy,  
6 condolences not in court today to try to bring counsel's  
7 health or his family's health through the mud. That's not --  
8 that's not the point of being here.  
9 However, for months we've been asking for pretty  
11:05AM 10 reasonable relevant information that we haven't received and  
11 so I'm happy to go through one by one but I wanted to state  
12 that --  
13 THE COURT: Yeah. We're going to go through them  
14 one by one --  
11:05AM 15 MR. MASSOGLIA: Because we'll be seeking --  
16 THE COURT: -- why don't we do that?  
17 MR. MASSOGLIA: We'll be seeking expenses as noted.  
18 So interrogatory number 7 which sought arrest  
19 history, you know, one of the, sort of, primary defects in  
11:05AM 20 defendants' responses is a conflation of admissibility with  
21 discoverability. The argument is primarily that this --  
22 THE COURT: Well, let's take that in an iterative  
23 process. Counsel, obviously it doesn't have to be admissible  
24 to be discoverable, right?  
11:05AM 25 MR. CARROLL: I understand that, yeah.

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1 THE COURT: Okay. All right. There you go. So  
2 that's not an issue. Interrogatory 7 has to do with arrest  
3 history. If you get that information, what do you intend to  
4 do with it?  
11:06AM 5 MR. MASSOGLIA: We intend to see if there is  
6 evidence that could be admissible such as the hypothetical in  
7 the motion was an arrest in the 1990s for shoplifting. That  
8 would speak to, you know, character for truthfulness.  
9 Charles Sikanich's --  
11:06AM 10 THE COURT: All right. Let's say -- let's say --  
11 let's use that hypothetical. All right. So you're saying an  
12 arrest -- not a conviction, but an arrest in the 90s would  
13 precipitate some admissible future or relevant discovery? I  
14 mean, things don't have to be admissible but they do have to  
11:06AM 15 be relevant and proportional. What the heck would you do  
16 with a 1990 shoplifting?  
17 MR. MASSOGLIA: Well, so I guess my request was  
18 perhaps not phrased properly. We don't know arrests or  
19 convictions. And if something was expunged, you know, I  
11:06AM 20 think it could be fair game for discussion not simply an  
21 arrest from the 90s for shoplifting but --  
22 THE COURT: Okay. Well, that's the example you  
23 chose. That makes me think your discovery request you don't  
24 know what you're doing with it or that it's not proportional  
11:07AM 25 to the case.

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1 MR. MASSOGLIA: So --  
2 THE COURT: So why don't -- why don't we talk about  
3 what you need that's proportional to the case regarding  
4 arrest history? What are you looking for that you can  
11:07AM 5 actually use in a meaningful way --  
6 MR. MASSOGLIA: So there are things --  
7 THE COURT: -- because an arrest from the 1990s is  
8 not it and I think --  
9 MR. MASSOGLIA: There are things --  
11:07AM 10 THE COURT: -- you know that too. Don't interrupt.  
11 MR. MASSOGLIA: I'm sorry, your Honor.  
12 THE COURT: Yeah, go ahead.  
13 MR. MASSOGLIA: There are things that we don't know  
14 and there are things that we know. And one of the things  
11:07AM 15 that we know is that, for example, defendant Sikanich was  
16 arrested for impersonating a police officer. That to me is  
17 information that suggests there may be other aspects of these  
18 individuals' backgrounds that we are not aware of because,  
19 you know, I'm only aware of that -- that impersonating an  
11:07AM 20 officer arrest because of like muckraker who posted a website  
21 about look at the ward superintendent and all the dirty  
22 things he's done, right, so we don't know very much about it.  
23 THE COURT: All right. Counsel, what's your  
24 thought on interrogatory 7?  
11:08AM 25 MR. CARROLL: Well, I think that -- I think that

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1 it's very overbroad and the problem is that if -- though  
2 information doesn't have to be admissible to be discoverable,  
3 it seems to me that the direct route of obtaining admissible  
4 evidence would be to ask not about arrests but about arrests  
11:08AM 5 in which there was a conviction potentially for something  
6 that would be admissible.  
7 THE COURT: Well, one of the things I have to look  
8 at is proportionality so what's the burden to you? If he's  
9 aware of these arrests, I mean, it's -- this is not like you  
11:08AM 10 have to do something very complicated. You ask your client  
11 have you ever been arrested before and you formulate a  
12 response. So what's the burden to it?  
13 MR. CARROLL: I think that you only -- I think the  
14 burden would be minimal but I think that the -- that you  
11:08AM 15 don't ask the burden question until you ask whether the  
16 information sought is relevant and I just -- I don't see how  
17 it is --  
18 THE COURT: Well, what if there was a very recent  
19 arrest for impersonating an officer, right?  
11:09AM 20 MR. CARROLL: I'm not clear why that would be  
21 relevant. I don't think it would be relevant.  
22 THE COURT: Well, it could -- it could turn into  
23 impeachment, right?  
24 MR. CARROLL: If he were convicted, I think it  
11:09AM 25 would turn into impeachment. I mean --

1 THE COURT: No, not necessarily. All right.  
 2 Anything further on interrogatory 7 because you haven't  
 3 articulated any burden at all?  
 4 MR. CARROLL: It's not a significant burden. I'm  
 11:09AM 5 not claiming that it is.  
 6 THE COURT: All right. Do you have any issues  
 7 regarding confidentiality?  
 8 MR. CARROLL: Yes. I'm concerned about this  
 9 information getting out into the public.  
 11:09AM 10 THE COURT: Well, is there a confidentiality order  
 11 in place?  
 12 MR. CARROLL: There is, yes.  
 13 THE COURT: Okay. So what -- what's the  
 14 confidentiality issue? I mean, people have to comply with  
 11:09AM 15 the order, right?  
 16 MR. CARROLL: I'm just -- yeah. I mean, they would  
 17 have to comply with the order provided that we -- that we  
 18 produced it under the confidentiality order.  
 19 THE COURT: Okay. All right. Anything further on  
 11:09AM 20 number 7?  
 21 MR. MASSOGLIA: No, your Honor.  
 22 THE COURT: All right. How long do you need  
 23 to -- I'm going to grant the motion to compel on number 7. I  
 24 haven't heard any burden that confidentiality is going to be  
 11:10AM 25 addressed. If it's not admissible, then you don't have to

1 worry about that because that's a decision for another day  
 2 but we're talking about discovery. We're not talking about  
 3 admissibility, so.  
 4 MR. CARROLL: I understand.  
 11:10AM 5 THE COURT: All right. Is 3-17 still a good  
 6 deadline for that, counsel?  
 7 MR. CARROLL: Yes.  
 8 THE COURT: Okay. All right. Counsel, what's your  
 9 next one?  
 11:10AM 10 MR. MASSOGLIA: The next item is interrogatory  
 11 number 12 which sought written and oral communications about  
 12 Benjamin George and about this lawsuit, the plaintiff in this  
 13 lawsuit.  
 14 You know, the primary issue and the primary  
 11:10AM 15 relevance of this information is that whatever, for example,  
 16 defendant Gardiner or defendant Sikanich said to their  
 17 colleagues on the day in question is going to be relevant.  
 18 If they are talking during the course of Benjamin George's  
 19 prosecution, that is going to be relevant. If they're  
 11:10AM 20 talking after they are sued, that is going to be relevant.  
 21 All of these -- all of these topics are something that we'd  
 22 like to address in a deposition. If there's something that  
 23 we'd like to know, if there's something that we frankly need  
 24 to know whether -- we would like to know before deciding  
 11:11AM 25 whether we want to go to the expense of deposing additional

1 former employees of defendant Gardiner and the response from  
 2 defendants was not responsive, I mean, in -- really in any  
 3 form and I don't think that this is an outrageous request or  
 4 a difficult request.  
 11:11AM 5 And again, going back to the burden portion of the  
 6 question, the degree to which the defendants remember this  
 7 information will allow them to answer the question. It's not  
 8 as if they are needed to -- you know, they don't need to like  
 9 hire a consultant to determine what they remember and what  
 11:11AM 10 they don't remember, for example.  
 11 Now on the question of written communications, it  
 12 does get a little bit more burdensome because if there's not  
 13 satisfactory production and there hasn't been, then we would  
 14 ask for a forensic examination of defendant Gardiner's phone  
 11:12AM 15 as well as defendant Sikanich's phone because we have witness  
 16 testimony indicating that these men talked all the time over  
 17 text messages and the fact that there's just nothing between  
 18 them suggests to me that something was destroyed or that  
 19 someone is not looking hard enough and I'd like something or  
 11:12AM 20 someone independent to --  
 21 THE COURT: Do you have a good faith basis to  
 22 believe something was destroyed?  
 23 MR. MASSOGLIA: I believe it's possible. I'm not  
 24 sure --  
 11:12AM 25 THE COURT: What is your good faith basis that they

1 actually destroyed something?  
 2 MR. MASSOGLIA: The fact that there were no  
 3 communications produced between James Gardiner and Charles  
 4 Sikanich in discovery and it's been represented to me that  
 11:12AM 5 there were no written communications but a former employee of  
 6 defendant Gardiner testified at deposition that they were  
 7 talking on their phones all the time and where they -- so  
 8 this is the one day in 2019 when they didn't speak on the  
 9 phone while they were both going to my client's house  
 11:12AM 10 harassing his roommate and having him arrested, that's  
 11 just --  
 12 THE COURT: Well, speaking on a phone may or may  
 13 not produce a written record. It depends if they're talking  
 14 on the phone or using text messages, et cetera.  
 11:13AM 15 Counsel, what's your thoughts on interrogatory 12?  
 16 MR. CARROLL: I think it's -- I think it's  
 17 extremely overbroad. I mean, the level of detail required in  
 18 order to respond and the breadth of the request "identify  
 19 each person with whom you have had any non-privileged  
 11:13AM 20 communications regarding the arrest and prosecution of  
 21 Benjamin George and/or the present lawsuit," if you asked me  
 22 to recount every conversation I've had about this lawsuit  
 23 just personally over the last three years since it came into  
 24 my caseload, I couldn't possibly do that and I don't know how  
 11:13AM 25 a --

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1 THE COURT: Well, a discovery request doesn't  
 2 require people to create memory that doesn't exist but the  
 3 response would be pretty simple in that instance, right? "I  
 4 don't remember," I mean, isn't that a response?  
 11:13AM 5 MR. CARROLL: It certainly is a response but --  
 6 THE COURT: Or they do remember because a couple of  
 7 the conversations were pretty meaningful and they have a  
 8 recollection about it. Why wouldn't that be relevant and  
 9 proportional and --  
 11:14AM 10 MR. CARROLL: I'm not saying that -- I'm saying  
 11 that the objection was based on -- the interrogatory as  
 12 phrased to me looked overbroad for the reason that I just  
 13 stated.  
 14 THE COURT: Well --  
 11:14AM 15 MR. CARROLL: It's not that my clients have had no  
 16 conversation --  
 17 THE COURT: Hang on a second. Hang on a second.  
 18 Hang on a second. The reason you said it was overbroad was  
 19 that people wouldn't remember every conversation and then I  
 11:14AM 20 addressed that in my question so let's talk about it.  
 21 There's two parts. There's the oral and the written, right?  
 22 MR. CARROLL: Uh-huh.  
 23 THE COURT: The oral is they either remember or  
 24 they don't, right. So if they remember a meaningful  
 11:14AM 25 conversation, how would that be overbroad?

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1 MR. CARROLL: It -- I suppose it wouldn't.  
 2 THE COURT: Okay. And it wouldn't be burdensome  
 3 because they either remember or they don't.  
 4 As to the written, that's a totally different  
 11:14AM 5 thing. So as to -- interrogatory 12 as to oral communication  
 6 is going to be granted. They're going to have to try to  
 7 remember; and if they don't remember, then the defendant -- I  
 8 mean, the plaintiff is stuck with the answer. And if they  
 9 have magically have a memory later in the process, then  
 11:15AM 10 they'll -- they'll be able to talk about the deposition  
 11 question "well, you were asked on such-and-such a date and  
 12 you didn't remember it," and then all of the sudden your  
 13 memory gets better after the fact, that's fine. I mean,  
 14 that's par for the course.  
 11:15AM 15 Now the written communication, there might be some  
 16 issues with I requested forensic review and all sorts of -- I  
 17 don't know the number of how -- there's no time frame  
 18 limitation, there's no limitation as to device so there are  
 19 some burden issues as to that. Can you address that on  
 11:15AM 20 interrogatory 12?  
 21 MR. CARROLL: Well, I think that would be -- I  
 22 don't think that there's any reasonable basis to assume that  
 23 my clients have withheld anything. In the response both to  
 24 that and this, sort of, correspondence document requests, I  
 11:15AM 25 indicated that I would follow up with my clients again to

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1 confirm that they do not have anything that they haven't  
 2 provided to me.  
 3 THE COURT: Have you done that? Have you asked  
 4 them if there's any written communication?  
 11:16AM 5 MR. CARROLL: Yes; and I would say that they're --  
 6 I mean, I can commit to have any written communication that  
 7 they haven't already produced produced by March 17th.  
 8 However, I've been told that there are none, so.  
 9 THE COURT: All right. Anything further on 12,  
 11:16AM 10 counsel?  
 11 MR. MASSOGLIA: Yeah. I think the written  
 12 communications may not just be with occurrence witnesses or  
 13 things like that. I mean, it could be a whole universe of  
 14 things. But one category of things that I've thought about  
 11:16AM 15 is, you know, deliberation about this lawsuit in the media.  
 16 So they've received a number of media requests,  
 17 they've issued statements in response to deposition testimony  
 18 in another action against defendant Gardiner and so these are  
 19 written communications that relate or could relate to the  
 11:17AM 20 lawsuit so I just want to make sure that this search --  
 21 THE COURT: Well, if you have other depositions in  
 22 another lawsuits, that's a different discovery request, isn't  
 23 it?  
 24 MR. MASSOGLIA: Well, they've been asked for  
 11:17AM 25 comment in this lawsuit as well.

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1 THE COURT: All right. But you're in possession of  
 2 that, right?  
 3 MR. MASSOGLIA: No.  
 4 THE COURT: You're not in possession of the public  
 11:17AM 5 statements?  
 6 MR. MASSOGLIA: In -- I think for several years,  
 7 there weren't any public statements made. I believe the  
 8 first public statement that was made was in February --  
 9 either January or February of this year after there was a  
 11:17AM 10 motion for summary judgment filed that made public some of  
 11 Tanya King's allegations and statements about defendant  
 12 Gardiner what she made while deposed. Defendant Gardiner  
 13 then issued a statement, I believe, to the Tribune. I don't  
 14 have a copy of that. But the point being is they were being  
 11:17AM 15 asked for comment repeatedly by a number of different  
 16 reporters. We know that because the news stories said  
 17 so-and-so declined to comment, defendant Gardiner declined to  
 18 comment.  
 19 And my presumption is that when you receive a  
 11:17AM 20 request for information from a lawsuit and you're an elected  
 21 official and you have the staff, you're talking about that  
 22 with the staff. You're talking about, you know, what does  
 23 this mean. You're talking about oh, shoot, you know, I wish  
 24 we hadn't had that guy falsely arrested, this is a giant  
 11:18AM 25 pain. Like I don't know what it's going to say but it's that

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1 sort of stuff, your Honor.

2 THE COURT: What I hear from the other side is he's  
3 going to ask his client. To the degree there's oral  
4 communications that they remember, they're going to have to

11:18AM 5 respond to that. And if they have and are in possession of  
6 written communications, they're going to have to do that too.  
7 And it's non-privileged communications. So if you're talking  
8 to an attorney and it's attorney-client or it's deliberative  
9 process -- whether it's legislative or executive -- I mean,  
11:18AM 10 there's a privilege issue that could exist but I haven't  
11 heard a request that -- or an indication that they're  
12 withholding anything on privilege.

13 Obviously if you have a conversation with your  
14 client and you determine that there is a particular  
11:18AM 15 communication you think it's privileged, you would have to do  
16 a privilege log and I'm sure you would do that so --

17 MR. MASSOGLIA: Sure.

18 THE COURT: -- I don't see a live bullet on 12.  
19 He's going to ask his client. Now you might be suspicious of  
11:19AM 20 it and you're -- that's -- you're entitled to that opinion as  
21 well but there's nothing for me to compel if he's complying,  
22 so.

23 All right. Let's move on to the next one. So 12  
24 is granted as to oral and written. I'm not going to order a  
11:19AM 25 forensic examination of any phones. That's not proportional

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1 to the needs of the case and a proper predicate has not been  
2 granted. Same deadline on 3-17.

3 Okay. Counsel, what's your next one?

4 MR. MASSOGLIA: Interrogatory number 24 which read  
11:19AM 5 in substance, have you used any social media or like  
6 messaging platforms including but not limited to or directed  
7 at any of your employees --

8 THE COURT: Slow down. It happens with everybody.  
9 It's not just you. Once people read, they always put their  
11:19AM 10 foot on the gas and start going really fast because they  
11 think it's helpful. It's not. She can only take 300 words a  
12 minute, which is really fast, by the way. But I can -- just  
13 read it.

14 Actually, I know what all of them say so if you  
11:19AM 15 want to just refer to it by number, that's okay too. Go  
16 ahead.

17 MR. MASSOGLIA: Sure. My apologies for speeding  
18 things up. Number 24 asks how are these defendants using  
19 social media to monitor their critics. It's relevant for  
11:20AM 20 impeachment, 404(b) material because multiple critics have  
21 reported publicly that defendant Gardiner has, for example,  
22 come to their home and taken pictures of their home or come  
23 to their place of work and almost come to blows.

24 In this case, defendant Gardiner and defendant  
11:20AM 25 Sikanich went to my client's home. It's very similar MO-type

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1 stuff that I think would be relevant. I don't think it's  
2 vague.

3 THE COURT: All right. Counsel, what's your  
4 thought on 24?

11:20AM 5 MR. CARROLL: My objection is based on relevancy.  
6 I don't see why their use of social media or messaging  
7 platforms has anything to do with this lawsuit. This lawsuit  
8 pertains to the events on a specific day pertaining to the  
9 plaintiff's arrest and my client's use of social media in his  
11:20AM 10 office or among staffers has nothing to do with that, so.

11 THE COURT: All right. The motion to compel as to  
12 24 is denied. It's got to be related to this case, right?

13 If you want to ask questions, open-ended questions in a  
14 deposition, you can do that. We're not going to turn  
11:21AM 15 discovery into a free-ranging fishing expedition into every  
16 potential use of social media. That's not proportional.

17 All right. What's the next one?

18 MR. MASSOGLIA: I believe we're on to the RFPs 2,  
19 3, and I believe part of 7 is mooted. Maybe all of 7. I  
11:21AM 20 would just want to -- want to check on that. Yeah, I  
21 think -- okay. So these three are addressed.

22 RFP 5, it's not records of arrests. It's pretty  
23 similar to the akin interrogatory. Our position is the same.  
24 I can expand upon my belief -- what I still believe if you'd  
11:21AM 25 like but that's it.

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1 THE COURT: What's your thought on that one? I  
2 mean, it's a -- the other side of the coin on the other  
3 request, right, or interrogatory?

4 MR. CARROLL: It is. There's -- I suppose there's  
11:21AM 5 more of a burden in this instance. I would just note that in  
6 Gardiner's case, he indicated that he is not withholding  
7 things -- anything pursuant to the request -- to the  
8 objection. In Sikanich's case --

9 THE COURT: And here's the other thing, if there is  
11:22AM 10 an arrest, they're not going to necessarily be in possession  
11 of those or in control of those documents on it. So if you  
12 get the information regarding a particular arrest, then, you  
13 know, I don't know if the request -- RFP to them is the way  
14 to obtain those records.

11:22AM 15 But if they're in possession of it or in control of  
16 it, then -- and it's related to something that is otherwise  
17 being disclosed by way of interrogatory, you don't have an  
18 objection to it, do you?

19 MR. CARROLL: Not in light of the Court's prior  
11:22AM 20 ruling.

21 THE COURT: Okay. All right. Okay. All right.  
22 That's one is handled, counsel. What's the next one?

23 MR. MASSOGLIA: Numbers 8, 9 and 10, I believe  
24 they're broken up in the motion as 8 and 10 together and 9  
11:22AM 25 together. I can address them together or separately

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1 depending on --

2 THE COURT: Sure. They're related.

3 MR. MASSOGLIA: Okay. So really a central part of  
4 this case is abuse of government office and abuse of power  
11:23AM 5 doing so under color -- under color of law while employed by  
6 the City of Chicago in the scope of your employment as a City  
7 of Chicago alderman or ward superintendent, whatever it may  
8 be. There are multiple independent investigations into the  
9 conduct of these defendants as it pertains to their use of  
11:23AM 10 public office. There is a recent arrest and charge by the  
11 attorney general. The attorney general put out a statement  
12 on it. I don't exactly know what the attorney general's  
13 criminal enforcement ability but something related to also  
14 abuse of office as it relates to the machine gun case. And  
11:23AM 15 so, you know, I think all of this information is pretty  
16 squarely within -- one, it's not disproportional because  
17 we're asking for things that they already have. Presumably  
18 they can't invoke privilege on something that they were  
19 provided by the Chicago -- by a Chicago investigative entity,  
11:23AM 20 the board of ethics, whatever it may be. And similarly to  
21 the FBI, I mean, they can invoke Fifth Amendment privilege I  
22 guess at some point as it relates to this but, you know, I  
23 don't see any privilege questions. I don't see much of a  
24 burden question because it's not asking them to, you know,  
11:24AM 25 search the, you know, the corporate email with ten million

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1 emails on it. It's just not a particularly burdensome  
2 request.

3 And, you know, I think the other proportionality  
4 factors also favor plaintiff. You know, the issues at stake  
11:24AM 5 as I've just alluded to -- abuse of official authority,  
6 government power -- is hugely important. It's consistent  
7 with reformatory purposes of 1983, Section 1983, and in this  
8 case it's more so because it is an elected official and --  
9 one of its employees.

11:24AM 10 THE COURT: Go ahead.

11 MR. MASSOGLIA: I was just going to keep talking  
12 about proportionality.

13 THE COURT: Okay. All right. Let's see what the  
14 other side says. What's are your thoughts on 8, 10, 9?

11:24AM 15 MR. CARROLL: Again, the objection is relevancy in  
16 all three circumstances. It's not clear to me that all of  
17 the -- all of the board of ethics matters are -- involved  
18 alleged abuses of power to begin with and the fact that -- I  
19 mean, the fact is none of these investigations have been  
11:25AM 20 concluded. There's been no findings. This to me just looks  
21 like a fishing expedition and I think it's completely beside  
22 the point.

23 THE COURT: Can you address -- can you address  
24 proportionality? How much information are we talking about,  
11:25AM 25 how much -- because, for example, if they're being

23

1 investigated, their extent of the knowledge of the  
2 investigation really depends on where the investigation is  
3 because, you know, the inspector general or somebody else is  
4 doing something. They don't usually show their cards until a  
11:25AM 5 certain point in the process anyway so what are we talking  
6 about? Is there a lot of documents? Is there -- I mean,  
7 what exactly --

8 MR. CARROLL: To be honest --

9 THE COURT: What I can't assess is proportionality.  
11:25AM 10 I understand why he wants it. I don't know what's out there.

11 MR. CARROLL: I'm not clear on that either to be  
12 honest. I'm familiar with one of the investigations because  
13 it sort of runs along the same lines as another civil matter  
14 that's pending before the Northern District pertaining to the  
11:26AM 15 social media question. That certainly doesn't look like an  
16 abuse of power scenario that would be relevant in this case  
17 so I can't say for certain how --

18 THE COURT: Well, when you got the discovery  
19 request, I'm assuming you talked to your client about what  
11:26AM 20 they either did or did not have that was responsive so --

21 MR. CARROLL: I did, but I also -- I don't know  
22 what's happened since I had that -- had those discussions  
23 which were awhile back so I can't say what any new  
24 developments have been in those -- in the board of ethics  
11:26AM 25 matters and, you know --

24

1 THE COURT: All right. To your knowledge -- I'm  
2 sorry to interrupt. But to your knowledge, what would the  
3 form be, like letters from investigative bodies or  
4 what the -- what kind of discovery are we talking about?

11:26AM 5 MR. MASSOGLIA: I'm not sure, your Honor.

6 THE COURT: Yeah. I'm asking both sides.

7 MR. CARROLL: I mean, I know that a letter will  
8 initiate -- you know, a letter is sent to advise the subject  
9 of an investigation that -- you know.

11:27AM 10 THE COURT: That's like a form letter, though,  
11 isn't it? It's got a couple of numbers on it but that's  
12 about it.

13 MR. CARROLL: Probably, yeah. And then -- but then  
14 I'm not clear, you know. So in the instance of the Facebook  
11:27AM 15 matter, there was -- basically all of the social media  
16 communications pertaining to that subject matter were then  
17 produced as I understand it so I don't -- I honestly don't  
18 have a clear understanding of the scope as it pertains to the  
19 board of ethics.

11:27AM 20 I know -- frankly, I know -- the FBI investigation,  
21 the defendant Sikanich has a trial on that case literally  
22 next week on the 9th of March, commencing on the 9th of  
23 March. That to me seems particularly sensitive and --

24 THE COURT: Well, what's the case number on that?

11:28AM 25 MR. CARROLL: I don't have it in front of me.



25

1 THE COURT: Okay.

2 MR. CARROLL: I don't know for sure. All I know is

3 the trial date and the approximate time frame.

4 THE COURT: Well, do you know what the charges

11:28AM 5 were?

6 MR. CARROLL: It was for --

7 THE COURT: Is it a civil or a criminal case?

8 MR. CARROLL: It's a criminal case. It's -- it's

9 related to -- I guess it was reported in the news so I'm not

11:28AM 10 saying anything out of turn here but it was related to the

11 attempted sale of an antique machine gun to a federal

12 agent --

13 THE COURT: Okay.

14 MR. CARROLL: -- and there may be a related charge

11:28AM 15 because it was done on city time allegedly.

16 THE COURT: Okay.

17 MR. CARROLL: So --

18 THE COURT: Well, why don't we -- why don't we do

19 this: As to the RFP 8, 10, and 9, see what your client has.

11:28AM 20 If you need to assert the Fifth Amendment, you're allowed to

21 assert the Fifth Amendment.

22 MR. CARROLL: Of course.

23 THE COURT: If you have documents that you don't

24 think are -- that are responsive but you don't think are

11:29AM 25 discoverable, you can submit them for an *in camera*

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1 inspection, how does that sound? Because I don't even know

2 what it is so I can't -- it's really hard for me to determine

3 its admissibility when we're dealing with hypotheticals and

4 he doesn't even know what he's got, if anything.

11:29AM 5 MR. MASSOGLIA: Thank you, your Honor.

6 THE COURT: How does that sound?

7 MR. CARROLL: That seems reasonable.

8 THE COURT: Okay. All right. Does that cover

9 everything?

11:29AM 10 MR. MASSOGLIA: I believe the last item was 14

11 through 18 RFPs but I'm pretty sure we've covered that with

12 the orders on the other written communications.

13 THE COURT: Yeah. I think -- I think that's

14 covered.

11:29AM 15 MR. MASSOGLIA: And then, of course, the matter of

16 expenses, Rule 37(a)(5)(A).

17 THE COURT: All right. I don't have a -- I'm not

18 going to impose sanctions. I think both sides have been

19 operating in good faith. I don't have a basis for sanctions.

11:29AM 20 I'm not going to award sanctions. Discovery disputes happen

21 and that's -- that's okay. And usually it takes much more of

22 a predicate to warrant expenses on that and I don't see that

23 in this case.

24 What's our next court date, counsel?

11:30AM 25 MR. MASSOGLIA: Your Honor, we -- you asked us to

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1 update on the status of the case today but I'm not aware that

2 we have another court date so if you'd like to do that now,

3 plaintiffs are prepared to --

4 THE COURT: Well, in light of the additional

11:30AM 5 discovery, how about I ask the parties to meet and confer

6 regarding revised case management dates so we can make sure

7 everything is going to be reasonable. And then obviously it

8 would relate to after the 17th because you want to see what's

9 produced, right? So maybe a status report a week after that,

11:30AM 10 how does that sound? After the 17th does that sound good and

11 then we can set case management dates by order?

12 MR. MASSOGLIA: Would you -- so --

13 THE COURT: So basically he's got a bunch of stuff

14 that's either coming your way or not on the 17th. A week

11:30AM 15 after that, the parties file a joint status report saying

16 this is what's going on, these are our proposed dates. I'll

17 take a look at that and then I can do a revised case

18 management order.

19 MR. MASSOGLIA: Sure. So is discovery -- this is

11:31AM 20 sort of an academic question but from the 21st to the 24th

21 discovery would theoretically be closed because there's

22 currently a fact discovery --

23 THE COURT: This is what I'm talking about, like

24 if -- there's a cutoff and all kinds of case management dates

11:31AM 25 but some of those might need to be adjusted in light of

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1 production on the 17th, right?

2 MR. MASSOGLIA: Right. My question is can we take

3 depositions on the 21st, 22nd, and 23rd and so on?

4 THE COURT: Well, if you have scheduled

11:31AM 5 depositions, there's no stay so fire away. If you need to

6 reschedule them in light of what you see on the production by

7 the 17th, that's what I'm saying, you guys meet and confer --

8 MR. MASSOGLIA: Okay.

9 THE COURT: -- try to figure all that out. You go,

11:31AM 10 well, I need this extra time because I got to get this

11 deposition, my guy is not available, he's available this

12 date, all that stuff, how about that?

13 MR. MASSOGLIA: That sounds good, your Honor.

14 THE COURT: So do you want longer for the status

11:31AM 15 report deadline than a week after the 17th or --

16 MR. MASSOGLIA: I think that we'll have a -- at

17 least plaintiff will have a good picture of what we're going

18 to want to ask for. I don't want to speak for defendants.

19 THE COURT: Is a week enough after the production?

11:32AM 20 MS. FRONCZAK: I think so, your Honor.

21 THE COURT: Okay.

22 MR. CARROLL: Yeah. I think that's good.

23 THE COURT: All right. Gloria, give me a status

24 report deadline a week after the 17th.

11:32AM 25 COURTROOM DEPUTY: March 24th.



1 THE COURT: All right. Anything else I need to  
2 address today?

3 MR. MASSOGLIA: Yes, your Honor. One question that  
4 was sort of danced about in the motion but nothing final came  
11:32AM 5 of it was the issue of defendants Gardiner and Sikanich's  
6 deposition availabilities. In November and December and in  
7 February, we've been told we would get availabilities. I  
8 don't want to just send them subpoenas, track them down, use  
9 that expense and, you know, ruin everybody's day.

11:32AM 10 Can you -- is there any way that we can implore  
11 that 3-17 date to also be a date to provide deposition  
12 abilities within the following month?

13 MR. CARROLL: That's certainly no problem. I just  
14 want to say there's never been any objection -- I assumed we  
11:32AM 15 needed to sort all of this out which has been a sort of  
16 pending matter for a little while now prior to --

17 THE COURT: You want to look at that stuff before  
18 you depose him too, right?

19 MR. MASSOGLIA: Oh, yes, your Honor.

11:33AM 20 THE COURT: All right. Well, meet and confer on a  
21 deposition date, work it out, how about that?

22 MR. CARROLL: My clients are happy to sit for  
23 deposition, so.

24 THE COURT: All right. Thank you, everybody.

11:33AM 25 MR. MASSOGLIA: Thank you, your Honor.

1 MR. CARROLL: Thank you.

2 THE COURT: Gloria, that motion is granted in part  
3 and denied in part as stated in open court. Okay.

4 (Proceedings concluded at 11:33 a.m.)

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8 C E R T I F I C A T E

9 I hereby certify that the foregoing is a complete, true  
10 and accurate transcript of the proceedings had in the  
11 above-entitled matter before the Honorable John Robert Blakey  
12 at Chicago, Illinois, on March 1, 2023.

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14 /s/ Laura LaCien March 17, 2023  
15 Official Court Reporter DATE

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